

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**RIN 3133-AD75**

**The Low-Income Definition**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Interim final rule and request for comments.

**SUMMARY:** NCUA is amending the definition of “low-income members” to clarify that, in determining if a credit union qualifies for a low-income designation, the comparison of credit union data, whether individual or family income data, must be with statistical data for the same category. The amendment will clarify the intention of the original regulatory text so it is consistent with the geo-coding software the agency uses to make the low-income credit union (LICU) designation.

**DATES:** The rule is effective [Insert date of publication in the FEDERAL REGISTER].  
Comments must be received by [Insert date 60 days from date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Sheila Albin, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

Background

The Federal Credit Union Act (Act) authorizes the NCUA Board (Board) to define “low-income members” so that credit unions with a membership consisting of predominantly low-income members can benefit from certain statutory relief and receive assistance from the Community Development Revolving Loan Fund. 12 U.S.C. 1752(5), 1757a(b)(2)(A), 1757a(c)(2)(B), 1772c-1. This authority has been implemented in §701.34 of NCUA regulations, known as the low-income rule. 12 CFR 701.34. In April 2008, the Board proposed substantial changes to the rule, which had previously been based on measuring median household income, with geographic differentials for certain areas with higher costs of living. 73 F.R. 22836 (April 28, 2008). In brief, the Board proposed to, and as adopted in the final rule, did replace median household income with median family income or median earnings for individuals as better measures, more flexible, and in line with standards used by other federal agencies. 73 F.R. 71909 (Nov. 26, 2008).

As discussed in the preamble to the final rule, NCUA also undertook as part of the regulatory changes to facilitate the low-income designation process by eliminating the requirement for credit unions to apply for the designation. NCUA is in the process of implementing geo-coding software to make the calculation automatically for credit unions during the examination process.

NCUA will make the determination of whether a majority of an FCU's members are low-income based on data it obtains during the examination process. This will involve linking member address information to publicly available information from the U.S. Census Bureau to estimate member earnings. Using automated, geo-coding software, NCUA will use member street addresses collected during FCU examinations to determine the geographic area and metropolitan area for each member account. NCUA will then use income information for the geographic area from the Census Bureau and assign estimated earnings to each member.

73 F.R. at 71910-11. NCUA's software ensures that the same categories of data available for member income at a particular credit union are compared with like categories of statistical data on income from the Census Bureau. In particular, individual member earnings information is compared to median individual earnings data, family income information is compared to median family income data, and so forth.<sup>1</sup>

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<sup>1</sup> NCUA's geo-coding software, known within the agency as the "Low-Income Designation Assessment Tool," is currently a stand-alone software program developed by NCUA's Office of the Chief Information Officer with guidance from regional staff experienced in low-income designation. Regional staff as well as Economic Development Specialists currently use the tool as needed based on requests from credit unions. Eventually, the same software rules will be embedded into the NCUA AIREX examination software. The current version performs 30 different ratio calculations for each member based on a variety of factors and data to determine whether the member meets the low-income definition. The variety of ratios is expansive in order to provide all of the possible options for members to meet the definition. Factors recognize the following: (1) data sources include both decennial income data as well as American Community Survey income data; (2) different data is incorporated for metro vs. non-

The final rule in November 2008 also provided credit unions, as an alternative to relying on NCUA's geo-coding software, the option of providing actual income information about their members as a basis for qualifying as a LICU. Confusion has arisen regarding the appropriate comparison of actual member information and statistical data from the Census Bureau, prompting the need for this clarifying amendment. The confusion arises from a discussion in the preamble to the final rule, where the Board stated:

The rule also provides an alternative basis for an FCU to qualify for a LICU designation. An FCU may be able to demonstrate the actual income of its members based on data it has, for example, from loan applications or surveys of its members. An FCU may qualify as a LICU if it can establish a majority of its members meet the low-income formula. For example, an FCU with 1,000 members may be able to show the actual income of 501 or more of its members is equal to or less than 80% of the MFI for the metropolitan area(s) where they live. As a practical matter, the Board thinks few FCUs will need this option because NCUA's approach of matching member residential information with Census Bureau income information will provide an estimate very close to members' actual income.

73 F.R. at 71911. The rule provides median family income or median individual earnings as alternatives and, as noted above, NCUA's geo-coding software compares like categories of data. Unfortunately, the above-quoted statement in the preamble indicates that, as an alternative to relying on the NCUA's geo-coding, a credit union could apply for a low-income designation relying on a comparison of actual income data for individual members to statistical data on median family income as the basis for the designation. This would not be a valid or meaningful comparison. The Board believes

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metro geographic areas; and (3) ratio options include comparisons of census tract and block group income data, to zip code, county, MSA, state, and national data, plus comparisons of county income data to CBSA, state, and national income data.

that, as a matter of logic and statistical reasoning, only like categories of data may be compared in making the determination that a credit union's membership meets the low-income definition. Actual individual member income information should not be measured against median family income, but rather, against individual median earnings.

#### Changes to the Low-Income Rule

This interim final rule amends §701.34(a)(1) by clarifying that median family income and median earnings for individuals are alternative bases on which credit union members may qualify as low income. In addition, the subsection of the rule where the option for credit unions to submit their own information for purposes of qualifying for the designation is amended to clarify that actual member data must be compared with a like category of statistical data. For example, if a credit union provides individual income information for members, the median earnings for individuals must be used to determine if the members are low-income.

#### Interim Final Rule and Immediate Effective Date

NCUA is issuing this rulemaking as an interim final rule effective on publication. The Administrative Procedure Act (APA), 5 U.S.C. 553, generally requires that before a rulemaking can be finalized it must first be published as a notice of proposed rulemaking with the opportunity for public comment, unless the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. Additionally, the APA requires that, once finalized, a rulemaking generally must have a delayed effective date of 30 days from the date of publication, except for good cause. In this regard, NCUA believes good cause exists for issuing

these clarifying amendments as an interim final rule, effective immediately, in order to eliminate as soon as possible any confusion resulting from the preamble language that was inconsistent with or makes ambiguous the regulatory text for the definition of low-income members. To that extent, NCUA believes issuing this rulemaking as an interim final rule, effective on publication, is also in the public interest. Finally, credit unions should take notice that, upon the Board's adoption of this interim final rule, NCUA will not consider requests from credit unions under §701.34(a)(3) for a low-income designation based on a comparison of actual individual member income data to median family income data.

Although issuing these changes as an interim final rule, effective immediately, NCUA would like the benefit of public comment before adopting the changes in a final rule and invites interested parties to submit comments during a 30-day comment period. In adopting a final regulation, NCUA may revise the interim rule in light of the comments received if appropriate.

## **Regulatory Procedures**

### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. 5 U.S.C. 603(a). For purposes of this analysis, NCUA considers credit unions having under \$10 million in assets small entities. Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003). As of December 31, 2007, out of

approximately 8,410 federally insured credit unions, 3,599 had less than \$10 million in assets. This interim final rule merely clarifies the existing low-income rule and, therefore, an analysis is not required. NCUA, however, provided an analysis when it issued the final rule in November 2008, concluding that the economic impact on entities affected by the rule would not be significant. 73 F.R. 71911-12.

#### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Pub. L. 104-121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. While NCUA views this clarifying amendment as minor, the formal determination by the Office of Information and Regulatory Affairs is pending.

#### Paperwork Reduction Act

This clarifying amendment does not change the collection requirements under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

#### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will not

have substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 – Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

**List of Subjects**

**12 CFR Part 701**

Credit unions, Federal credit unions, Low income, Nonmember deposits, Secondary capital, Shares

By the National Credit Union Administration Board, on July 29, 2010.

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Mary F. Rupp

Secretary of the Board

For the reasons stated above, NCUA amends 12 CFR part 701 as follows:

**PART 701 — ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS**

1. The authority for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109-351, 120 Stat. 1966.

2. Amend §701.34 by deleting the first two sentences in (a)(2) and revising paragraph (a) to read as follows:

**§701.34 [Amended]**

(a) Designation of low-income status. (1) \* \* \* \* \*

(2) Low-income members are those members whose family income is 80% or less than the median family income for the metropolitan area where they live or national metropolitan area, whichever is greater, or those members who earn 80% or less than the total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater. \* \* \*

(3) \* \* \* Actual member income data must be compared to a like category of statistical data, for example, actual individual member income may only be compared to total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater.

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